

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

DANIEL A. MARTINEZ

FAA Order No. 2000-21

Served: August 24, 2000

Docket No. CP99NM0012

DMS No. FAA-1999-5984¹

ORDER²

Respondent Daniel A. Martinez has failed to file a timely response to FAA Order No. 2000-7, which directed him to file a supplemental brief explaining why he failed to answer the complaint and the law judge's order to show cause. Mr. Martinez was advised in FAA Order No. 2000-7 that if he did not mail his supplemental brief by May 4, 2000, then his appeal would be dismissed and the law judge's order assessing a \$2,200 civil penalty would be affirmed. Despite this warning, the postmark shows that Mr. Martinez did not mail his supplemental brief until May 8, 2000.

Mr. Martinez explains that his supplemental brief is late "because my grandmother was terminally ill from February until April 15th when she passed away and I was out of town taking care of her home and other family related issues and have just

¹ Materials filed in the FAA Hearing Docket (except for materials filed in security cases) are also available for viewing through the Department of Transportation's Docket Management System (DMS). Access may be obtained through the use of the following Internet address: <http://dms.dot.gov>.

² The Administrator's civil penalty decisions are available on LEXIS, Westlaw, and other computer databases. They can also be found in Hawkins's Civil Penalty Cases Digest Service and Clark Boardman Callaghan's Federal Aviation Decisions. For additional information, see 65 Fed. Reg. 47,557, 47,573-47,574 (August 2, 2000).

returned to Denver today May 5, 2000.” According to the return receipt,³ however, Mr. Martinez signed for FAA Order No. 2000-7 on April 5, 2000. Thus, he received FAA Order No. 2000-7 thirty days before the filing deadline. As a result, he lacks good cause for failing to file his supplemental brief by the deadline of May 4, 2000.

In any event, the relief Mr. Martinez seeks on appeal – *i.e.*, to substitute community service for the civil penalty -- is not available. The governing statute⁴ and regulations⁵ provide only for monetary penalties in FAA civil penalty actions; they do not provide for community service as a possible penalty.

THEREFORE, Mr. Martinez’s appeal is dismissed, the law judge’s initial decision is affirmed, and a civil penalty of \$2,200 is assessed.⁶

JANE F. GARVEY, ADMINISTRATOR
Federal Aviation Administration



VICKI S. LEEMON⁷
Manager, Adjudication Branch

Issued this 23rd day of August, 2000.

³ FAA Order No. 2000-7 was sent to Mr. Martinez on March 30, 2000, by certified mail, return receipt requested.

⁴ 49 U.S.C. § 46301.

⁵ 14 C.F.R. Part 13, Subparts G, H.

⁶ Unless Respondent files a petition for review with a Court of Appeals of the United States under 49 U.S.C. § 46110 within 60 days of service of this decision, this decision shall be considered an order assessing civil penalty. *See* 14 C.F.R. §§ 13.16(b)(4) and 13.233(j)(2)(2000.)

⁷ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202 (*see* 57 Fed. Reg. 58,280 (1992)) and redelegated by the Assistant Chief Counsel for Litigation to the Manager, Adjudication Branch, by Memorandum dated August 6, 1993.